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and the proposed Class*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

**IN RE: ZOOM VIDEO  
COMMUNICATIONS, INC PRIVACY  
LITIGATION**

Master File No. 5:20-cv-02155-LHK

**APPLICATION FOR APPOINTMENT  
OF KENNETH A. WEXLER AS  
INTERIM CLASS COUNSEL**

Honorable Lucy H. Koh

## This Document Relates to:

## All Actions

## INTRODUCTION

This consolidated litigation began with reports over the past several months concerning security flaws associated with a video communications service developed, marketed, and sold to businesses and consumers by Zoom Video Communications, Inc. (“Zoom”). The relevance of Zoom’s video conferencing application cannot be overstated, as it is among the options of essential communications tools in the wake of the global COVID-19 pandemic. Demand for

1 Zoom, and for services like it, has been meteoric with “stay-at-home” orders placed throughout  
 2 the United States and the world.

3       Zoom provides an online video conferencing platform which includes remote  
 4 conferencing services, online meetings, chat and mobile collaborations, and other forms of  
 5 interacting remotely. The use of Zoom’s services has exploded in the face of the current  
 6 pandemic. When the vast majority of businesses, schooling, and other forms of human  
 7 interaction were halted by stay-at-home directives, many turned to Zoom’s platform to securely  
 8 conduct business, keep up with family and friends, and attend classes. Unfortunately for its users,  
 9 Zoom failed to properly safeguard the personal information of those who utilized its platform.  
 10 Among other things, Zoom: collected its users’ information without adequate notice or consent  
 11 and then shared that information to third parties, such as Facebook, Inc. and LinkedIn; permitted  
 12 interference with sensitive and private video conferencing, known as “Zoombombing”; and  
 13 maintained inadequate security controls and encryption to prevent hacking or other compromise  
 14 of Zoom accounts.

15       The *Cullen* action, filed by Wexler Wallace LLP (“Wexler Wallace”) is the first case  
 16 filed against Zoom. As more cases followed, Wexler Wallace (with Tycko & Zavareeli LLP and  
 17 Gustafson Gluek PLLC) initiated efforts to bring the cases to a single forum, where they can be  
 18 efficiently managed for the benefit of all plaintiffs and putative class members. The result of that  
 19 work, in which other well-qualified counsel cooperated, is the basis upon which this Court  
 20 swiftly commenced the leadership application process provided for by Federal Rule of Civil  
 21 Procedure 23(g).

22       Pursuant to the Court’s May 28, 2020 Order (Dkt. No. 62), Kenneth A. Wexler of Wexler  
 23 Wallace seeks appointment as Interim Class Counsel. Mr. Wexler brings a career of expertise in  
 24 leading and managing complex class actions. He has a proven record of litigating cutting edge  
 25 issues and maximizing recoveries for consumers and businesses when their rights have been  
 26 violated. Mr. Wexler has accomplished this while working to ensure that the class-wide benefits  
 27 achieved are not diluted by superfluous legal work and inefficiencies that can plague large scale  
 28 litigation.

Mr. Wexler and his firm thoroughly investigated the claims in this litigation before filing suit. They retained and utilized experts to advise them on fast-developing technical issues. Wexler Wallace has the necessary resources and has committed to use them to prosecute the litigation to its conclusion. Mr. Wexler has already demonstrated leadership in this litigation and, if appointed as Plaintiffs' Interim Lead Counsel, will work cooperatively and collaboratively with all counsel as required to achieve a successful outcome for the class.

## ARGUMENT

## I. Mr. Wexler Has the Experience to Lead This Litigation

Mr. Wexler is the founder of Wexler Wallace, which is recognized nationally as a leading firm in complex litigation. Mr. Wexler has devoted his practice to class actions for most of his forty years as a lawyer, and in that time, he has been at the forefront of the fight against consumer fraud and other abuses. Mr. Wexler and his firm have held leadership positions in various types of complex cases, including biometric invasions of privacy, pharmaceutical overpricing, Hatch-Waxman antitrust violations, fraud on the government cases, investor fraud, and other consumer-related actions.

Several courts in which Mr. Wexler has practiced have recognized him and other attorneys at Wexler Wallace for their professional, vigorous advocacy on behalf of class members and their experience in the prosecution of complex class action and mass tort claims. The firm has successfully tried cases spanning diverse subject matters. The qualifications and breadth of Mr. Wexler's experience is set forth in the accompanying summary resume. *See* Attachment 1.

**II. Mr. Wexler Performed Considerable Work in Identifying and Investigating Claims in This Litigation, and He Has Already Assumed a Leadership Role**

Mr. Wexler and his firm conducted an extensive pre-filing investigation of Zoom’s privacy failures before drafting and filing the *Cullen* complaint. That complaint sets forth comprehensive, detailed allegations of the claims against the Zoom, encompassing all the wrongful conduct alleged against it. To identify the factual allegations and develop the theories

1 of liability, Mr. Wexler dedicated substantial resources towards reviewing applicable law and  
 2 potential causes of action that could be asserted on behalf of the relevant classes.

3 Mr. Wexler and his firm did not stop with the complaint. While other complaints were  
 4 still being filed, and as further details surrounding Zoom's security flaws came to light, Wexler  
 5 Wallace retained two experts to conduct independent and exhaustive evaluations of Zoom's  
 6 privacy failures. This culminated in those experts identifying critical actions by Zoom that affect  
 7 the class and will aid in the development of the case.

8 Moreover, Mr. Wexler has already shown leadership in this litigation. As cases were filed  
 9 subsequent to *Cullen*, Mr. Wexler (and his co-counsel) reached out to counsel in those actions to  
 10 discuss how to best move the litigation forward in an orderly and efficient manner. While  
 11 striving to promote courteous and professional relations among all Plaintiffs' counsel, as well as  
 12 Zoom's counsel, Mr. Wexler worked collaboratively in preparing, negotiating, and finalizing the  
 13 stipulation and proposed orders which dealt with the relating, transferring, and ultimate  
 14 consolidation of pending and subsequently-filed actions, which this Court granted. *See* Dkt. Nos.  
 15 28 & 62. The ultimate stipulation and proposed order involving the relationship, transfer, and  
 16 consolidation of the majority of the cases (and all those then residing in this Court), as well as  
 17 providing the guidelines for the current Rule 23(g) proceedings, was similarly worked on  
 18 collaboratively with the various counsel in this case, with Mr. Wexler taking an active and lead  
 19 role. In this regard, Wexler Wallace recognizes the extensive efforts of Hassan A. Zavareei of  
 20 Tyko & Zavareei LLP, who helped facilitate and coordinate the presentation of these matters  
 21 before this single forum. If appointed Interim Class Counsel, Mr. Wexler will continue to work  
 22 cooperatively and collaboratively with all Plaintiffs' counsel as dictated by the needs of the case,  
 23 tapping the vast reservoir of knowledge and expertise various counsel bring to the table.

24 **III. Mr. Wexler Has the Necessary Resources to Manage This Litigation**

25 Wexler Wallace counts its highly experienced and diverse attorneys and support  
 26 personnel as a significant part of the resources it will continue to devote to this litigation. Wexler  
 27 Wallace is prepared and able to devote such resources to manage and fund this litigation to a  
 28 successful conclusion. Because of his experience, Mr. Wexler is sensitive to the potential for

1 accumulation of costs and attorneys' fees that are unnecessary or of marginal benefit. With that  
 2 awareness, Mr. Wexler will propose the implementation of guidelines to monitor and protect  
 3 against accumulation of unnecessary fees or expenses. To that end, as responsible and necessary  
 4 in any case such as this, Mr. Wexler will propose -- and submit to the Court for approval – a  
 5 protocol for regular time and expense reporting to which all counsel acting for the class will be  
 6 bound. Any attorney time or expense that is not reported to and approved by Lead Counsel  
 7 pursuant to the protocol would not be eligible for submission to the Court.

## 8 CONCLUSION

9 Kenneth A. Wexler would be privileged to serve in leadership and represent the proposed  
 10 class. He and his firm are committed to the case, know well their responsibilities to the Court and  
 11 the putative class, and are intent on prosecuting the matter vigorously, efficiently, and in a  
 12 manner that minimizes costs. For the foregoing reasons, Plaintiff respectfully requests that this  
 13 Court appoint Kenneth A. Wexler as Interim Class Counsel.

14  
 15 Dated: June 4, 2020

Respectfully submitted,

16  
 17 */s/ Kenneth A. Wexler*  
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8                   \* *pro hac vice* application forthcoming  
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1                   *Attorneys for Plaintiff Cullen and the Proposed  
2                   Class*